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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,877	04/15/2004	Frank Wehrheim	7535-662US (RWP 1010 US)	7305
570 7590 04/30/2008 PANITCH SCHWARZE BELISARIO & NADEL LLP ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103				
EXAMINER				
DWIVEDI, VIKANSHA S				
ART UNIT		PAPER NUMBER		
3746				
MAIL DATE		DELIVERY MODE		
04/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/824,877

**Applicant(s)**

WEHRHEIM, FRANK

**Examiner**

VIKANSHA S. DWIVEDI

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
- Paper No(s)/Mail Date 8/25/2006
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant has elected Specie I and this embodiment is shown in figure 1 and 2. Claim 4 reads on embodiment of figure 1 and 2. Claims 1- 13 read on the elected species and they are considered in this Office action.

### ***Information Disclosure Statement***

Applicant Information Disclosure Statement submitted on 8/25/2006 is acknowledged. Since the submission complies with 37CFR 1.97 and 1.98 the references listed therein have been considered. An initialed and dated copy of Applicant's IDS form 1449 is attached to the instant Office action.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receptacle for a sensor system, radial extension and the diameter of the pump tubing must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Fulmer (U.S. Patent number 5,356,267).

Fulmer discloses a medical tubing pump comprising a pump wheel (40, 52, 50, 48, 44 and 45) having a circumference and a front side perpendicular to the wheel axis, two tubing insertion locations (20, 22) for insertion of a pump tubing such that the tubing wraps around the pump wheel (Figure 3)), and a stationary protective ring (34, figure 3) surrounding the entire circumference of the pump wheel (Figure 3) at the front side of the wheel for covering the inserted pump tubing; wherein the protective ring (34) directly borders the pump wheel (Figure 3) without contact over the entire circumference of the

pump wheel (Figure 3); wherein the protective ring (34) extends essentially flush to the front side of the pump wheel (Figure 2); wherein the protective ring comprises a front plate which covers the front side of the pump wheel (upper part of 34, figure 2)) and extends radially outwardly beyond the circumference of the pump wheel (lower part of 34, figure 2); wherein the protective ring (34) forms a sub-assembly with the tube insertion locations (20, 22); wherein the protective ring (34) is formed as one piece with the tubing insertion locations (20, 22); wherein the one piece is made of plastic (Figure 3); wherein the protective ring (34) is part of a cage (part of 34 that goes around ) surrounding the pump wheel (40, 52, 50, 48, 44 and 45) as shown in figure 2); wherein the cage comprises a rear ring (ring structure shown in figure 2 that is part of the housing 34) which circumferentially surrounds the pump wheel and bears on a front plate (Figure 2, the plate that extends from the housing) of a pump housing, and wherein the rear ring is spaced from the protective ring by an amount at least equal to a diameter of the pump tubing to be inserted (figure 2 and 3); wherein the spacing between the protective ring (front of 34) and the rear ring (ring structure shown in figure 2 that is part of the housing 34) forms a gap (38) for accommodating the pump tubing (32), wherein the gap (38) extends along a section of the wheel circumference and the gap is continuous in a radial direction of the rings from the wheel circumference to outside the cage; wherein the protective ring has a radial extension which is at least equal to a diameter of the pump tubing (Figure 2 and 3).

With regard to claim 12, features of claimed apparatus are recited structurally by Fulmer, claims directed to an apparatus must be distinguished from the prior art in

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terms of structure rather than function, because apparatus claims cover what a device is, not what a device does thus, the prior art structure is capable of performing the intended use as recited in the claim i.e. receptacle for a sensor system.

***Allowable Subject Matter***

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIKANSHA S. DWIVEDI whose telephone number is (571)272-7834. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3683

VSD